

## JOINT USE AGREEMENT

This Joint Use Agreement, hereinafter called "Agreement", is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the Department of Transportation, State of California, hereinafter called "Department", and Reclamation District 3 (Grand Island), hereinafter called "District".

### RECITALS

- A. On October 8, 2002, Department entered into a Memorandum of Understanding with the Reclamation Board, State of California, hereinafter called "Board", that satisfied Board Permit No. 17035 GM, issued to Department on June 7, 2001, acknowledging the placement of Department's metal beam guardrailing, hereinafter called "Railing", on the levee of the Sacramento River along State Route 160, from 4.2 miles north of the Contra Costa County Line north to Paintersville Bridge, on the federally-authorized Sacramento Flood Control Project Levee, part of which levee District is mandated to maintain. A map, entitled "Exhibit A," is attached which depicts the locations along State Route 160 where the Railing was installed. The MOU requires that the Department enter into joint use agreements with each of the named reclamation districts within which jurisdiction the Railing is installed.
- B. Department and District each assert the right to the use of the levee crown to perform its operations, maintenance, and repair activities.
- C. This Agreement clarifies the relationship of the Parties as to how the Parties' operations, maintenance, and repair activities will be coordinated due to the presence of the Railing on these levees.
- D. It is the intent of the Agreement to offset, to the extent reasonably possible, any adverse financial impact of the Railing on the District through use of existing Department personnel and

equipment, where possible, and thereby minimize or altogether avoid additional expense to the District. As an example, additional costs incurred to mow or spray the waterside of the levee slope over the Railing may be offset by the Department furnishing Traffic Control Measures to facilitate such maintenance activity.

- E. The levee upon which the Railing has been installed is a Project Levee of the federal Sacramento River Flood Control Project, subject to the jurisdiction of the State Reclamation Board. Some portions of the levee upon which the Railing was installed have a greater cross section and crown width than required for a Project Levee. As used herein, the term "Critical Levee Section" applies to that portion of the levee cross section and crown width required to meet Project Levee standards, the locations of which within the levee shall be established by the District. A drawing, entitled "Exhibit B," depicts how the "Critical Levee Section" is determined.
- F. Department and District have each asserted a senior right to the use of the levee crown to perform their operations, maintenance, and repair activities. In order to avoid costly litigation to determine (1) the extent of the Board's jurisdiction over the Department relative to the installation of the railing and (2) which party has the senior right and the extent of that right, the Parties agree to establish provisions for the orderly operations, maintenance, and repair activities of both the District and the Department, all of which activities are designed to advance public safety. In particular, the Department has represented a desire to coordinate its maintenance and repair activities with the District and to pay costs invoiced under Section 6.4 rather than avail itself of the rights provided for under Section 6.10, at least, if at all, until such time as the burden placed on the Department or the costs paid under Section 6.4 become substantial. Further, in light of the District's limited budget, it too would prefer to not litigate the issues avoided by the execution of this Joint Use Agreement.

#### AGREEMENT

Now, therefore, Department and District do hereby mutually agree as follows:

1. Routine Maintenance Activities:

- 1.1 District routine maintenance activities include visual inspection from the levee crown along the shoulder of the roadway, spraying the levee waterside for vegetation control, mowing, trimming, burning, debris removal, and placement of fill or riprap.
- 1.2 Department routine maintenance activities typically include Railing and roadway repair, mowing, litter removal, and tree trimming.
- 1.3 Traffic Control Measures as used in this Joint Use Agreement shall mean, but are not all inclusive of or limited to, shadow vehicles, pilot vehicles, flaggers, and barricades needed for the safety of the traveling public and those engaged in routine maintenance activities.
- 1.4 Department and District shall coordinate an annual schedule of planned routine maintenance activities so that Traffic Control Measures and other resources that Department will utilize during its maintenance activities may be shared with District so that District and Department may perform their maintenance activities jointly. Coordinated schedules should be mutually agreed upon prior to the beginning of the Department fiscal year, which begins each July 1<sup>st</sup>, with the intent of providing Department and District adequate time to obtain the appropriate anticipated resources to be expended in that upcoming fiscal year. Coordinated schedules may be revised or amended by either Party upon two weeks' notice for routine matters or any lesser period for reasons of weather or emergency. The coordinated schedule shall designate the contact person and one alternate for the District and Department. The designated contact people shall be responsible for communicating between the Parties to ensure understanding of when, where, and how coordinated activities may be conducted.
- 1.5 In the event that District and Department schedules, despite diligent efforts, cannot be coordinated to perform routine maintenance activities jointly, District and Department will proceed with their routine maintenance activities separately. District will perform its routine maintenance activities with Traffic Control Measures in place at its expense, except

as provided by Section 6.4, or utilize other resources as described herein for such activities.

Department will assist District in obtaining any necessary permits for such activities.

1.6 If, during performance of its routine maintenance activities, District requires additional Traffic Control Measures, other resources, or additional costs are incurred by District primarily due to the presence or impact of the Railing, District's added costs shall be invoiced to the Department as provided in 6.4 hereinbelow unless Department avoids or minimizes this expense by providing the necessary Traffic Control Measures and/or other resources to assist in or perform that District work.

1.7 District may request Department assistance in providing Traffic Control Measures for added safety while performing routine maintenance activities by coordinating such activities with Department's District 4 Maintenance Delta Region Manager and/or by establishing an Interagency Rental Agreement that will provide District with Department equipment and operator. If such an agreement is executed, implementation will be coordinated through the District and the Department's District 4 Maintenance Delta Region Manager.

1.8 Weather conditions and environmental constraints will have a major impact on District and Department activities. Coordination will be required to accommodate then current weather conditions and constraints and comply with environmental regulations and guidelines.

1.9 Maintenance activities such as mowing, spraying, trimming, and burning which may require Traffic Control Measures will need to be coordinated with Department's Traffic Management Plan (TMP) personnel. District shall coordinate with Department's District 4 Maintenance Delta Region Manager who will function as the liaison between District and Department's Traffic Management Planning personnel for all lane closures.

## 2. Railing and Levee Damage Repairs:

2.1 Department is responsible for the integrity of the Railing, highway operating systems, and the roadbed. In the event Department determines that the roadbed and/or Railing need repairs, Department will be responsible to bring the roadbed and/or Railing to operating standards at its expense. If such repairs require consequent repairs to the levee,

Department and District will work cooperatively to bring the levee and the roadbed and/or Railing to operating standards. District will be responsible for expenses involved in such consequent repairs to the levee only to the extent that such repairs would be needed to prevent an adverse effect upon District's Critical Levee Section. Department will be responsible for repairs to the roadbed and Railing as determined to be appropriate by the Department.

2.2 In the event of a declaration of emergency by an appropriate entity or a third party accident, any repairs to the damaged Railing and roadbed will be the responsibility of that third party or the Department. District will be responsible for any repairs to the Critical Levee Section to the extent it determines necessary, once it is determined that the damage to the levee was not solely due to the presence of the Railing. In all cases, Department and District will work in cooperation with each other to quickly and efficiently respond to any emergency.

2.3 In the event that a District levee on which a Department Railing is or will be located, shifts, subsides, erodes, or otherwise becomes unsuitable for placement of a Railing, District is under no obligation to repair said levee to make it suitable for Department's Railing. Additionally, District is under no obligation to maintain levees to prevent shifts, subsidence, erosion, or other actions that may compromise the levee substrate in which the Department's Railings are located and embedded except to the extent deemed necessary by District to protect the Critical Levee Section.

### 3. Levee Flood Control Slope Maintenance:

3.1 District will, as it deems necessary, perform levee flood control slope repair and maintenance activities from the roadbed such as rip-rap, levee repairs due to slip-outs, etc., that may be difficult to achieve due to the presence of this Railing. Department agrees to perform or coordinate, at its cost, the removal and replacement of the Railing and posts (the posts will be removed only when mutually agreed to be necessary) so that District may perform its levee flood control slope repair activities from the roadbed that are made materially more difficult or expensive to perform due to the presence of said Railing and posts.

3.2 District must coordinate with Department's District 4 Maintenance Delta Regional Manager to coordinate repair activities that require removal of posts or Railing.

3.3 In the event that Railing is removed to perform levee flood control slope repair activities and that work is not completed by the end of a workday and Railing ends would remain exposed or unprotected, Department must either replace the Railing to its original condition or have K-railing placed in the opening for safety. Department's District 4 Maintenance will store K-railing at its maintenance yard at [enter MTCE yard location here] to be used in conjunction with District's activities when needed and will arrange for its delivery and placement. Every reasonable attempt will be made to avoid the removal of any existing Railing end treatments because they are anchored in concrete and it will be very expensive to replace those treatments, provided, however, that no significant additional costs to the District would result.

4. Processes:

4.1 Coordination, Approval, and Notification processes necessary to perform operation, maintenance, and repair activities by Department and/or District, shall be developed and agreed upon by Department and District. These processes shall be followed to ensure the effectiveness of the activities conducted and the safety of the public and parties involved, recognizing that Department has as its primary concern the safety of the traveling public and the District has as its primary concern the safety of those parties and resources protected by the levee.

4.1.1 Coordination Process:

4.1.1.1 Department and District shall coordinate planned operational, maintenance, and repair activity schedules, lane closure permits, unplanned maintenance activity, encroachment permits, and the like that are necessary to conduct any maintenance activities by Department and/or District (prior to beginning such activities unless emergencies or weather conditions require otherwise).

4.1.2 Approval Process:

4.1.2.1 In the event of a conflict between Department and District, both parties agree to resolve all issues cooperatively with a mutual understanding of the responsibilities of maintaining the safety of the public by ensuring the integrity of both the levee and the roadway.

4.1.3 Notification Process:

4.1.3.1 Department's District 4 Maintenance Delta Region Manager will be the liaison for District for obtaining such permits for the coordination of District's levee maintenance activities as outlined in Section 4.1.1 of this Agreement.

4.1.3.2 Except in emergencies, District and Department shall give reasonable notice to each other regarding any changes to agreed upon operational, maintenance, and repair activities.

4.1.4 General Process:

4.1.4.1 When performing work coordinated under this Agreement, Department shall make adequate provisions for the protection of the traveling public and shall employ Traffic Control Measures to which the District shall conform. Department shall also provide, deliver, and place such barricades and safety devices as are required for maintenance activities on the State highway. District shall make adequate provisions for the protection of those protected by the levees in conjunction with District activities. Department will provide, deliver, and remove for Department's and District's use, directly or by contract with others, K-railing or other temporary systems deemed appropriate for the protection of the traveling public in the event that the Railing is lost or removed on a Railing protected section of the State Highway and these temporary barrier and railing systems may be stored at Department's District 4 Maintenance yards, at independent contractor's yards, or such other locations as may exist from time to time as selected by Department.

4.1.4.2 When possible, all work shall be planned and carried out so there will be minimum inconvenience to the traveling public.

4.1.4.3 All work shall conform to existing standards of maintenance activities as defined in permits and California law.

4.1.5 All Processes:

4.1.5.1 Neither Department nor District shall unreasonably delay or fail to coordinate, withhold approval, or notify the other party of operational, maintenance, or repair activities.

4.1.5.2 Each Party will notify the other Party of its desire to coordinate or obtain approval for operational, maintenance, or repair activities. Failure of the Department or the District to respond within 35 days of receiving a request to coordinate operational, maintenance, or repair activities or obtain that requested approval, shall be considered unreasonable and will entitle the Party that did not receive notice or a response to charge and receive from the offending party actual direct costs incurred from such failure or delay.

5 Emergency Operations:

5.1 Department, District, and Board shall provide a copy of their existing and future emergency operation plans to one another to be used as a guide toward the actions proposed to be taken by each party during an emergency. This Agreement hereby references these emergency operations plans as the agreed procedures to be taken in the event of an emergency. Such plans should set forth an outline of the respective responsibilities within the Department, District, or Board which will facilitate quick and efficient response to any emergency to minimize adverse impacts to the levees, roadways, the traveling public, and regional commerce. Such plans should also identify a central focal contact point for all emergency activities within the Department's, District's, or Board's responsible boundaries.

5.2 Emergency procedures and plans are intended to be flexible enough to ensure that all situations are timely and properly handled.



5.3 The emergency operations of the parties to this Agreement are to be guided by the Standardized Emergency Management System, hereinafter called “SEMS”, which was mandated by Senate Bill 1841. SEMS, is the system required by Government Code section 8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in the State of California.

5.4 Major and minor emergencies, deemed critical by Department or by District, may preempt coordinated scheduled activities.

6 Assignment, Disputes, Claims, Permits:

6.1 In the event that District responsibility for levee maintenance is terminated (for whatever reason) and that responsibility has been transferred to the Board, the Department of Water Resources (DWR), or some other entity, then the Board, DWR, or that other entity will, at their option, agree to the assignment by District to its successor of all the rights and obligations of District in this Agreement.

6.2 This Agreement shall be effective upon signature of the parties and shall remain in effect so long as there is a need for levee and highway maintenance.

6.3 Any issues requiring resolution shall be mediated by the Board after all other administrative efforts of resolution have been exhausted by the parties involved; provided, that mediation does not compromise or terminate the rights of all parties to seek legal relief in a court of appropriate jurisdiction.

6.4 No funds or resources are encumbered against this Agreement and the obligations of the Department and the District are subject to the adoption of each Annual State Budget Act and the District’s operating budget, respectively. Department’s financial obligations to the District, if any, are subject to District providing adequate proof, in a written claim against the Department, that the incremental costs incurred by the District were reasonable and due to the adverse presence or impact of the Railing. If the Department can demonstrate, by providing adequate proof, that it had previously provided assistance to the District, which was not required due to the presence of the Railing, the costs associated with the assistance

may be deducted from District's claim, but only the percentage of assistance that cannot be attributed to the presence of the Railing may be deducted. District shall submit its claim to the Board of Control and may accumulate costs incurred over a period of not more than 24 months before being submitted. Any claims for costs incurred more than 24 months prior to submission are deemed waived and unrecoverable. It is agreed that the need for such claims shall be diligently avoided through cooperative assistance of Department to the extent possible. Except as provided in Section 6.10, the only issue in a claim proceeding shall be the adequacy of the proof by District as called for above.

6.5 The Parties agree that by entering into this Agreement that (a) no rights are being waived by any Party, (b) no new obligations, other than those specifically provided for in this Agreement, are being assumed, and (c) as provided by Section 6.10, each Party preserves its right to seek legal action against the other Party(ies) to obtain final resolution as to the Board's jurisdiction over the Departments installation of the Railing and the parties' respective priorities for the maintenance, repair and improvement of the levee and of the highway, and to obtain such modification of this JUA as that resolution may require. Neither party shall claim to have acquired prescriptive rights as against the other party by the installation and maintenance of the Railing.

6.6 Department acknowledges that Railing installed on parts of SR 160 included districts other than those originally contemplated in Permit No. 17035 GM. Department will not oppose those omitted districts, specifically Reclamation Districts 341 and 349, petitioning the Board to amend Permit No. 17035 GM to include Districts 341 and 349 within Special Condition Sixteen of that Permit.

6.7 If any third party claim of liability is made against District arising out of Department's installation, removal, maintenance, or presence of the Railing, Department shall defend, indemnify, and hold harmless District from each and every such claim.

6.8 Neither Department nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by District in connection

with any work, authority or jurisdiction delegated to District under this Agreement. It is understood and agreed that District shall fully defend, indemnify and save harmless Department and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury occurring by reason of anything done or omitted to be done by District in connection with any work authority or jurisdiction delegated to District under this Agreement.

6.9 Neither District nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Department in connection with any work, authority or jurisdiction delegated to Department under this Agreement. It is understood and agreed that Department shall fully defend, indemnify and save harmless District and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury occurring by reason of anything done or omitted to be done by Department in connection with any work authority or jurisdiction delegated to Department under this Agreement.

6.10 If Department asserts in a Board of Control claim proceeding an argument based upon lack of Board jurisdiction over the installation and/or maintenance of the Railing and/or which entity has the senior right of way for its road or levee and whether the Railing creates a significant impairment upon the District's right of access to the waterside portion of the levee, the Department shall first be bound to file an action seeking declaratory relief as to these issues described above. Such action shall be dispositive on the issue(s) filed and cover all levees within the District addressed by this Agreement. Any final judgment on this issue may be introduced into the claim proceeding described in Section 6.4 and shall be considered by the Board of Control in determining the validity of District's claim. The action for declaratory relief shall be filed in the Sacramento Superior Court and shall be limited to the issues described above. The final judgment shall be res judicata as to any further action on these issues. In any such action in which the defendant prevails, the defendant shall be entitled to reasonable attorney's fees from the plaintiff. If Department prevails as the senior

party, the Department agrees it shall not be entitled to reimbursement from District for any claims previously paid.

6.11 It is recognized that it would be a substantial benefit to both parties for the revetment which protects the waterside slope of the District's levee to be raised significantly. Such benefits of a raised revetment could come in the form of: (a) a reduction of the risk of levee erosion created by wave wash and high water events; (b) an increase in protection given to the substrate into which the Railing posts are imbedded; (c) a reduction in the need for levee slope maintenance from the highway, which could reduce the amount of repairs and the need to remove the Railing to gain access to the levee; and (d) an increase in protection to the shoulder and pavement of State Route 160. Accordingly, it is agreed that the parties, in cooperation with the other districts which are parties to a similar Agreement, will pursue State and federal funding to realize this additional protection for the Railing, the highway, and the levee, including such mitigation costs as may be incurred. This cooperation may come in the form of, but not be limited to, sending supporting letters to legislators and State agencies and appearing before committees and State agencies. The State Reclamation Board, whose approval of this Agreement is required, has represented that it will assist in the pursuit of such funding. It is understood that the portion of such costs to be contributed by the District shall be within its financial capability. It is also understood that a portion of this funding is potentially available through the Department's funds for providing further protection to the traveling public of those using State Route 160, and that the Department will diligently attempt to locate a source of such funding.

6.12 This Agreement shall continue indefinitely unless modified by written agreement of both parties or by a court, should the respective rights of the parties be affirmatively raised.

**IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE HEREIN ABOVE APPEARING.**

The Parties of this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said Parties to the obligations set forth herein.

**CALIFORNIA DEPARTMENT  
OF TRANSPORTATION**

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JODY JONES  
Department, Director of District 3  
**CALIFORNIA DEPARTMENT  
OF TRANSPORTATION**

**RECLAMATION DISTRICT 3  
GRAND ISLAND**

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BART DESAI  
Department, Maintenance Division Chief of  
District 4

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KEN PUCCI  
Chairman

**CALIFORNIA DEPARTMENT  
OF TRANSPORTATION**

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JOE CAPUTO  
Department, Maintenance Division Chief of  
District 3